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THE HONORABLE LONNY R.
SUKO
NOTED FOR CONSIDERATION ON:
MONDAY, MAY 16, 2011
WITHOUT ARGUMENT

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

EDWARD J. CARCICH and JENNIE
VEGA-CARCICH,

Plaintiffs,

v.

CITIMORTGAGE,

Defendant.

No.: 10-429-LRS

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CITIMORTGAGE'S MOTION FOR MORE
DEFINITE STATEMENT

Defendant CitiMortgage submits this Memorandum of Points and Authorities in support of its Motion for More Definite Statement.

Under Federal Rule of Civil Procedure 12(e), "a party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e); *Havens Rlty. Corp. v. Coleman*, 455 U.S. 363, 383-84 (1982) (Powell, J. concurring). Such a motion for more definite statement is appropriate when the complaint is so unintelligible that a responsive pleading cannot be crafted. *Taylor v. Cox*, 912 F. Supp. 140, 143 (E.D. Pa.

1 1995). Rule 12(e) requires that the Defendant identify the defects in the complaint and the
 2 details it wants the plaintiff to include. Fed. R. Civ. P. 12(e).

3 In their 21-page complaint, the Plaintiffs allege that CitiMortgage committed
 4 numerous violations against their “civil rights” under the Debt Collection Practices Act
 5 (“FDCPA”) and the Fair Credit Reporting Act (“FCRA”). However, Plaintiff’s Complaint is
 6 wholly devoid of any allegations supporting these conclusory contentions. Therefore,
 7 CitiMortgage is unable to understand the basis of the complaint made against it. For
 8 example, Plaintiffs claim that CitiMortgage violated some type of telephone call protocol by
 9 not “advis[ing] us of our civil rights and by not invoking the consumer warning “this is an
 10 attempt to collect a debt and any information will be used for that purpose.” Plaintiffs also
 11 fabricated a cause of action for “overshadowing.” Because these allegations are so
 12 conclusory, CitiMortgage is unable to answer.

13 Pursuant to Rule 8(a)(2), the Complaint must contain “a short and plain statement of
 14 the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). In other
 15 words, the complaint must give the Defendant “(1) notice of the circumstances which give
 16 rise to the claim, or (2) set forth sufficient information to outline the elements of the claim or
 17 permit inferences to be drawn that these elements exist.” *Bell Atl. Corp. v. Twombly*, 550
 18 U.S. 544 (2007) (“While a complaint . . . does not need detailed factual allegations . . . , a
 19 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more
 20 than labels and conclusions, and a formulaic recitation of the elements of a cause of action
 21 will not do.”) Accordingly, Defendant asks that Plaintiff be required to give Defendant
 22 notice of the claims asserted against it by, at minimum, repleading to identify what claim is
 23 asserted and by providing sufficient information to outline the elements of the claim and the
 24 factual bases underlying its assertion of the existence of those elements or to permit an
 25 inference that those elements exist.

1 Accordingly, Defendant requests that Plaintiff be ordered to provide a more definite
2 statement.

3
4 DATED: April 12, 2011

5 BULLIVANT HOUSER BAILEY PC

6
7 By /s/ Charles A. Lyman
8 Charles A. Lyman, WSBA #30495

9 Attorneys for Defendant Citimortgage
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on April 12, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

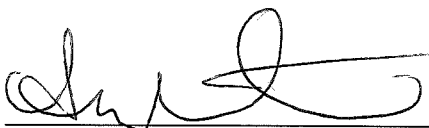
I further certify that the following parties received the foregoing document:

Edward J. Carcich
Jennie Vega-Carcich
7512 Big Meadows Road
Chattaroy, WA 99003
pro se plaintiffs

☒ via first class mail, postage prepaid.
☐ via facsimile.
☐ via hand delivery.

I declare under penalty of perjury under the laws of the State of Washington at Seattle, Washington, that the foregoing is true and correct.

DATED: April 12, 2011

By 
Suzanne M. Petersen

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